

2011 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB426)

Received: 01/11/2012

Received By: btradewe

Wanted: Soon

Companion to LRB:

For: Janet Bewley (608) 266-7690

By/Representing: Joe Hoey, aide

May Contact: Larry Konopacki and Anna Henning

Drafter: btradewe

Subject: Environment - mining

Addl. Drafters: jkreye

Extra Copies:

Submit via email: YES

Requester's email: Rep.Bewley@legis.wi.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Change approval process, timelines, and tax for iron mining to be like Minnesota's

Instructions:

See topic. Also, still want notice of intent and three initial payments, but change to \$100,000 each and index for inflation.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	btradewe 01/13/2012	kfollett 01/17/2012	jmurphy 01/17/2012	_____	lparisi 01/17/2012		
/P2	btradewe 01/20/2012	kfollett 01/20/2012	phenry 01/20/2012	_____	sbasford 01/20/2012		
/1	jkreye 01/24/2012	kfollett 01/25/2012	rschluet 01/25/2012	_____	lparisi 01/25/2012	lparisi 01/25/2012	

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/P2	btradewe 01/20/2012	kfollett 01/20/2012	pherry 01/20/2012	_____	sbasford 01/20/2012		

FE Sent For:

1/15/12
1/25/12
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By/Representing: **Joe Hoey, aide**

May Contact: **Larry Konopacki and Anna Henning**

Drafter: **btradewe**

Subject: **Environment - mining**

Addl. Drafters: **jkreye**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Bewley@legis.wi.gov**

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/?	btradewe	1/11/12 1/17	Jan 1/17/12				

FE Sent For:

<END>

Tradewell, Becky

From: Konopacki, Larry
Sent: Thursday, January 12, 2012 8:59 AM
To: Tradewell, Becky
Cc: Henning, Anna
Subject: FW: Drafting request for Rep. Bewley

Attachments: 111026sen_mining_lak_ah.pdf

Hi Becky, please see below the drafting request from Rep. Bewley. Note that there are some blanks that will still need to be filled in, and they might add some provisions at some point on prospecting.

Please let me know if you have any questions.

Larry

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

Hi Becky, I understand that you spoke with Rep. Bewley's office about drafting a substitute amendment to AB 426. They asked that I prepare drafting instructions for you, as follows:

- They would like the sub to be prepared primarily as a set of changes to ch. 293 Stats., instead of by the creation of a new statutory chapter for ferrous mining.
- Revise the three payments under s. 70.395 (2) (dc), Stats., from \$50,000 to \$100,000, and index those payments over time as provided under s. 70.375 (6). (Becky, this and the other changes to the net proceeds tax below would apply to all metallic mining, not just ferrous mining)
- Change the tax under s. 70.375 from a net proceeds tax to a tax on the gross ore material mined, modeled on the MN gross tonnage tax. (Note that Rep. Bewley still wants to maintain the rest of the disbursement system for the proceeds from this tax as provided under current law, including construction payments.)
- In ch. 293, define "ferrous mineral" as provided in AB 426 and define "ferrous mining" as "the mining of ferrous minerals at mining sites where the department determines that it is not likely that any of the disturbed areas will contain significant amounts of sulfide minerals."
- Revise 293.39 (1) to include a provision that states that the environmental impact statement for a ferrous mining application must be completed within time limits created in the sub to mirror those in place under current law in Minnesota as closely as possible (the attached memo includes our description of this timeline). The sub should require that an EIR for ferrous mining applications under s. 23.11 (5), Stats., be submitted with a mining application and should begin the new EIS review time period when the department determines that the ferrous mining application, including the EIR, is administratively complete. Note that there is little similarity between the *steps* in the EIS processes in MN and WI, so please review the MN law to determine what portions of that state's EIS creation process you think most closely line up with the WI process from the submission of a complete permit application and EIR forward. I have looked at this, too, (and will talk to Anna about this) and will get in touch with you to discuss.
- For ferrous mining, require the master hearing to be held within ____ days of the issuance of the final EIS and final decision to be issued within __ days of the completion of the record from the master hearing.
- Allow all timelines created in the sub and existing under current law to be extended by agreement of the department and the applicant.

this was changed in later discussions. Instead, replicate to extent possible Minn. process. Eliminate¹ master hearing and coordination with other permits.



111026sen_mining_
lak_ah.pdf (2...

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WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATE SELECT COMMITTEE ON MINING JOBS
FROM: ^{LAK} Larry A. Konopacki, Senior Staff Attorney, and Anna ^{AH} Henning, Staff Attorney
RE: Ferrous Mining Permit Application Process in Wisconsin, Minnesota, and Michigan
DATE: October 26, 2011

This memorandum describes the regulatory processes for obtaining approvals for mining ferrous¹ ore bodies in Wisconsin, Minnesota, and Michigan. Specifically, it describes the respective ferrous mine permitting processes for each of these three states, including the pre-application stage, environmental review, public involvement and challenges, permit timelines, and recent mine permitting activity. It concludes with brief comments regarding the significant differences among the three states' approaches, and some limitations of any comparisons among those approaches.

WISCONSIN

Under Wisconsin law, Department of Natural Resources (DNR) authorization is required before a person may engage in exploration,² prospecting,³ or mining of metallic minerals.⁴ Mining refers to activities related to extracting minerals for commercial purposes, including the extraction of minerals and the various infrastructure and waste processing activities required to support the extraction.

DNR is authorized to grant mining permits following a multi-stage process involving a pre-application notification, several opportunities for public hearings and public review, preparation of an

¹ Generally, "ferrous" metals are those with high iron content. "Nonferrous" metals are those other than iron, such as copper and nickel.

² Exploration involves drilling holes not more than 18 inches in diameter to examine geologic features.

³ Prospecting (also called "bulk sampling") involves more extensive examination of an area than exploration, including the collection of ore samples by means such as excavating, trenching, and construction of ramps and tunnels, but not including activities intended for and capable of commercial exploitation of an ore body.

⁴ In Wisconsin, the metallic mineral mining regulatory system applies to both ferrous and nonferrous mining activities. The mining of nonmetallic materials, such as sand and gravel, is governed under a separate statute.

environmental impact statement (EIS), and approval of various state and federal permits for environmental and natural resources impacts resulting from the project.

Other Approvals Required

A typical mining project may involve application for two dozen or more separate permits, licenses, or approvals from the DNR.⁵ Examples of approvals that may be required include permits for drainage and fill affecting wetlands and streams; high capacity wells or surface water withdrawals; wastewater discharge; groundwater quality; air emissions; and solid waste. Most of the related approvals are evaluated using the same standards that apply to projects outside of the mining context. Exceptions apply to wetlands, groundwater regulation, and solid waste facilities, for which unique statutory or administrative rule provisions apply to mining operations. The DNR generally issues decisions on these other permits, licenses, or approvals concurrently with a final decision on the mining permit.

Metallic Mining Permitting Process

Pre-application process

A person who intends to apply for a metallic mining permit must first submit a "notice of intent" to the DNR. The notice of intent is an indication that the potential applicant is interested in developing a mine and will be collecting data to support a mining permit application. The notice of intent must generally be submitted *prior to* collecting data to support the application. [s. 293.31 (1), Stats.; s. NR 132.05 (1), Wis. Adm. Code.] The notice of intent must include information about the potential applicant; a map of the proposed mining site; the date the prospective applicant intends to file a mining permit application; environmental data; and a preliminary project description including a description of the ore body, the mining and processing methods to be used, the estimated project schedule, and other specified information. [s. NR 132.05 (2), Wis. Adm. Code.]

The DNR is then required to advise the potential applicant about specific environmental and quality assurance requirements the person must provide for a mining permit application and any required environmental impact report; the methodology and procedures to be used in gathering information; the type and quantity of required information on the natural resources at the proposed mining site; the timely application date for all other necessary approvals to facilitate the consideration of all approvals at the master hearing; whether the DNR will accept general environmental data submitted by the potential applicant with the notice of intent; and preliminary verification procedures to be conducted by the DNR. [ss. 293.31 (4) and 293.43 (1m), Stats.; s. NR 132.05 (4), Wis. Adm. Code.] The DNR may revise or modify requirements relating to information which must be gathered and submitted by the potential applicant. [s. NR 132.05 (5), Wis. Adm. Code.] The DNR may also require the potential applicant to develop a "scope of study" designed to comply with the DNR's informational requests. [s. NR 132.05 (7) (a), Wis. Adm. Code.]

⁵ *The Permitting Process for a Metallic Mineral Mine, Mining Information Sheet, Wisconsin DNR (2003), at 1.*

Mining permit application

A mining permit application must include a mining plan; a reclamation plan; a proposed monitoring and quality assurance plan; evidence that the applicant has applied for zoning approval and any other approvals from the DNR that are required for operation of the mine; information about the applicant, information about the potential unsuitability of the mining site;⁶ an estimate of the cost to the state of reclamation; and other information. [s. 293.37 (2), Stats.; s. NR 132.06 (3), Wis. Adm. Code.]

When all necessary information has been collected, the DNR holds a "master hearing" on the mining proposal at which the mining permit and all other required approvals are reviewed together. [s. 293.43 (1m), Stats.; s. NR 132.06 (6), Wis. Adm. Code.] Following the master hearing, the DNR issues its decision on the mining permit according to the timeline discussed below. [s. NR 132.09 (1), Wis. Adm. Code.]

Standards for approval

The DNR is required to deny a mining permit if, among other criteria:

- The mining plan and reclamation plan will not result in adequate reclamation of the mining site.
- The proposed mine will not comply with applicable air, ground and surface water, and solid and toxic waste disposal requirements.
- A proposed surface mine site is unsuitable for surface mining.
- The proposed mine will endanger public health, safety, or welfare.
- The proposed mine will result in a net substantial adverse economic impact in the area reasonably expected to be most impacted by the mining activity.
- The proposed mining operation does not conform with all applicable zoning ordinances.
- The proposed mining activity may reasonably be expected to create: landslides or substantial deposition from the proposed operation in stream or lake beds which cannot be feasibly prevented; significant surface subsidence which cannot be reclaimed because of the geologic characteristics present at the proposed site; or hazards resulting in unpreventable, unavoidable, unmitigable, irreparable damage to various types of structures, improvements, and natural resources. [s. NR 132.10 (1), Wis. Adm. Code.]

⁶ An area is unsuitable for surface mining if mining activity may reasonably be expected to destroy or irreparably damage habitat required for survival of endangered species of vegetation or wildlife if such species cannot be firmly reestablished elsewhere or specified unique features of the land which cannot have their unique characteristics preserved by relocation or replacement elsewhere. [s. 293.01 (28), Stats.]

The DNR is required to issue the mining permit if it determines that the proposal satisfies analogous criteria (i.e., if the mine will result in adequate reclamation, will comply with applicable requirements, etc.). [s. 293.49 (1), Stats.]

Environmental review

The DNR is required to prepare an EIS for every mining permit. The EIS includes a description of the significant long-term and short-term impacts of the proposed mining activity, including impacts after the mining has ended, on: tourism; employment; schools and medical care facilities; private and public social services; the tax base; the local economy; and other significant factors. [s. 293.39, Stats.]

The EIS prepared for a mining permit includes an analysis of activities directly regulated under the mining permit and all other DNR approvals necessary for the mining permit to be approved. As discussed below, the EIS, along with the mining permit and all other necessary DNR approvals, are all subject to review at the master hearing, to the fullest extent possible. [s. 293.43 (1m), Stats.]

Public hearings and challenges

The DNR is authorized to hold hearings related to any aspect of the administration of the metallic mining statutes. [s. 293.15, Stats.] The DNR typically holds a public hearing to review the environmental impact report and permit application and may hold additional technical meetings with the applicant that are open to the public.

In addition, the DNR is *required* to hold various types of hearings at certain points in the mining permit application process, including shortly after the submission of a notice of intent, after the release of a draft EIS, and after the release of the final EIS. [s. 293.43 (3) (b), Stats.; s. NR 132.05 (3), Wis. Adm. Code.]

The hearing held following the release of the final EIS is the "master hearing," described above. This hearing has two parts: a public informational hearing and a contested case hearing. [s. 293.43 (5), Stats.] During the contested case hearing portion of the master hearing, parties may submit evidence and call and cross-examine witnesses. The final decision on the mining permit is also subject to administrative review, which may include a contested case hearing, and judicial review.

Process timelines

Under current law, the process to obtain a mining permit in Wisconsin currently requires *at least* 2½ years and may take more than four years, depending on the complexity of the environmental analysis and review process, the time and data needed for the development of the numerous permit applications, the adequacy of the applicant's submissions, and the amount of public interest.⁷ Although the process includes several deadlines with respect to portions of the application process, there is no overall deadline by which the entire application process must be completed.

⁷ Evans, Thomas J., *An Overview of Metallic Mineral Regulation in Wisconsin*, Special Report 13, Third Edition, Wisconsin Geological and Natural History Survey (2004), at 32-33; *The Permitting Process for a Metallic Mineral Mine*, at 32-33.

The permit approval process begins with the submission of a notice of intent to submit a mining permit application, described above. The notice of intent need not be submitted within any particular time of the submission of the mining permit application; however, because it generally must be submitted before any data is collected, it would typically need to be submitted well in advance of the mining permit application.

DNR must hold a public informational hearing regarding the notice of intent no less than 45 days or more than 90 days after it is submitted. [s. NR 132.05 (3), Wis. Adm. Code.] Within 90 days of the close of this hearing, the DNR must provide the advice to the prospective applicant, described above, relating to information that must be included in the mining permit application. [s. NR 132.05 (4), Wis. Adm. Code.] If the DNR requests a scope of study, it must be submitted by the potential applicant to the DNR within 120 days of the request, and the DNR must accept, reject, or make modifications to it within 60 days of its receipt. [s. NR 132.05 (7) (b) and (c), Wis. Adm. Code.]

Between the issuance of the notice of intent and the filing of a mining application, the potential applicant prepares the scope of study, if required, and collects background environmental data. This process may require 12-18 months.⁸

A mining application must be accompanied by an environmental impact report,⁹ if required, and a feasibility report¹⁰ for any mining waste facility.¹¹ Within 60 days of submittal of a waste facility feasibility report, the DNR must notify the applicant whether the report is complete, or specify what information is needed to complete the report. [s. NR 182.08 (3) (a), Wis. Adm. Code.]

After the applicant submits a mining application, the DNR prepares the EIS. DNR must hold a public informational meeting no sooner than 30 days and no later than 60 days after the draft EIS is released. The DNR must then hold the master hearing no sooner than 120 days and no later than 180 days after it releases the final EIS. [s. 293.43 (3) (b), Stats.] Under current law, the preparation of a draft EIS and final EIS, and the applicable public review and input periods associated with them, can be expected to take more than a year.¹² The DNR estimates that it may take about nine months to complete the master hearing, to prepare the hearing transcript, to allow for the parties' legal briefs to be prepared and filed, and for the final decision to be rendered.¹³

⁸ *Id.*, at 32; *The Permitting Process for a Metallic Mineral Mine*, at 1.

⁹ The DNR may require an applicant for a permit or statutory approval to submit an environmental impact report if the area affected exceeds 40 acres, the estimated cost of the project exceeds \$25,000, or the applicant is requesting approval for a high capacity well in certain locations or affecting certain resources. [s. 23.11 (5), Stats.; *see, also*, s. NR 150.25, Wis. Adm. Code.] The information contained in the environmental impact report is used by the DNR in preparing the EIS.

¹⁰ "Feasibility report" means a report for a specific solid waste disposal site or facility that describes the site, surrounding area, and proposed operation in terms of land use, topography, soils, geology, groundwater, surface water, proposed waste quantities and characteristics, and preliminary site or facility design concepts. [s. NR 182.04 (18), Wis. Adm. Code.]

¹¹ *The Permitting Process for a Metallic Mineral Mine*, at 2.

¹² *An Overview of Metallic Mineral Regulation in Wisconsin*, at 33.

¹³ *The Permitting Process for a Metallic Mineral Mine*, at 9.

DNR is required to make the final decision regarding a mining permit within 90 days of the completion of the record from the master hearing and a decision on the adequacy of the waste facility feasibility report and on site feasibility within 90 days of completion of the master hearing. [ss. NR 132.09 (1) and NR 182.08 (3) (b), Wis. Adm. Code.] Decisions regarding all related permits and approvals issued by the DNR are generally subject to the same timelines, provided that the applicant submits timely applications. [s. 293.43 (1m) (b), Stats.] The review timeline may be extended by the outcome of any administrative or judicial review of the DNR's permit decision.

Permitting History

In Wisconsin, the DNR has approved only one mining operation under the existing metallic mining statutes--the Flambeau Mine located in Rusk County.¹⁴ This was not a ferrous mine. A few other mining operations have been proposed, but the proposals were terminated at various stages of the permitting process. The Flambeau Mine, which did not include mineral processing or tailings disposal on the mining site, required 3½ years to complete the regulatory process.¹⁵

MINNESOTA

As in Wisconsin, any person who mines metallic minerals in Minnesota must first obtain a mining permit and various related permits and approvals. The person must also complete an environmental review process.

Multiple Minnesota agencies have responsibilities relating to such approvals. The Minnesota Department of Natural Resources (DNR) issues mining permits. The Minnesota Pollution Control Agency (PCA) issues permits for air emissions, water discharge, solid and hazardous waste, and noise. The Minnesota's Environmental Quality Board (EQB) oversees the environmental review process, although the Minnesota DNR is the agency designated to draft and approve an EIS for a mining project. In addition, the Minnesota Department of Health and other agencies may have responsibility for issuing additional approvals in some instances.

The Minnesota statute governing mining permits is relatively brief and has been largely intact since 1973. Except with regard to differing application fees, the statute generally does not distinguish between the mining of ferrous and nonferrous minerals. However, it directs the Minnesota DNR to adopt separate rules governing nonferrous mining. The regulations governing nonferrous mines are generally more stringent than the standards governing ferrous mines. For example, they prohibit mining that disturbs the surface in a range of geographic areas that is broader than the set of areas for which ferrous mining is prohibited.

Under Minnesota law, issuance of a mining permit is contingent upon completion of the environmental review process. The issuance of the mining permit does not appear to be contingent upon

¹⁴ *How the Department of Natural Resources Regulates Metallic Mining, Mining Information Sheet, Wisconsin DNR (2003), at 2.*

¹⁵ *An Overview of Metallic Mineral Regulation in Wisconsin, at 32.*

the granting of other required approvals, nor is the mining permit application required to be considered in conjunction with applications for other environmental permits and approvals.

Mining Permit Application

Minnesota law does not require a formal pre-application process. Instead, the process for requesting a ferrous mining permit begins with the submission of a permit application to the Minnesota DNR. However, in Minnesota, the environmental review process will typically be well underway before the mining permit application is submitted.

A ferrous mining permit application must include environmental setting maps; an environmental setting analysis; mining and reclamation maps; and a mining and reclamation plan. The applicant also must submit a notice and an affidavit of the applicant's advertisement of the ownership, location, and boundaries of the proposed mining area and reclamation or restoration operations, which must be published in a legal newspaper in the locality of the proposed site at least once per week for four successive weeks before the application is filed. [Minn. Stat. s. 93.481; Minn. R. 6130.4300 and 6130.4400.]

6130.4400

Standards for Approval

The Minnesota metallic mineral mining statute authorizes the Minnesota DNR to issue a mining permit if it determines that the reclamation or restoration planned for the operation complies with lawful requirements and can be accomplished under available technology and that a proposed reclamation or restoration technique is practical and workable under available technology. [Minn. Stat. s. 93.481 subd. 2.] Neither the statute nor the administrative rules further specify the standards for approval or denial of a ferrous mining permit. However, the rules specify various location criteria and engineering parameters required of ferrous mining operations, which may inform a decision regarding a mining permit. The following is a nonexhaustive list of such regulations:

- The site of the mining project must be chosen to minimize adverse impacts on the environment and the public. In addition, the site must not be located within any of nine categories of "exclusion areas for mining," including, for example, areas within 300 feet of a state designated trout stream and areas within 1/4 mile of a national, wild, scenic, or recreational river. Unless there is no "feasible and prudent alternative," the mining site must also not be located within an "avoidance area for mining," including, for example, a state or federal wildlife management area, or land governed by a municipal shoreland ordinance.
- Mining methods must be used which provide areas for waste disposal at the earliest opportunity.
- Buffers, barriers, stockpiles, and tailings basins must be designed according to specified construction and engineering standards.
- Landforms must be designed and constructed to complement nearby natural terrain, minimize adverse water quality and quantity effects on receiving waters, enhance the survival and propagation of vegetation, be structurally sound, control erosion, promote early completion

and progressive reclamation, and encourage the prompt conversion from mining to an approved subsequent use.

- Mining areas must be managed so that watershed modifications are minimized. Runoff from these areas must be discharged without injury to life, property, and natural resources.
- A minimum of two feet of surface overburden must be placed upon the completed portions of each bench and top of any rock, lean ore, or coarse tailings stockpile and upon other portions of such stockpiles for which vegetation is required or approved.
- Avoidable dust must be controlled by techniques such as water spray, chemical binders, anchored mulches, vegetation, and enclosure and containment.
- Techniques must be employed to prevent subsidence and other surface displacement.
- The project must adhere to specified vegetation standards. For example, vegetation must be established on structures such as overburden stockpiles and tailings basins.

[See Minn. R. 6130.1000-6130.4100.]

Environmental Review

Under Minnesota law, if an EIS is required for a given project, no permit authorizing the project may be granted until an EIS is prepared and determined to be adequate. [Minn. Stat. s. 116D.04 subd. 2b.] Under the Minnesota EQB's administrative rules, an EIS is mandatory for the construction of any new metallic mineral processing facility.¹⁶ [Minn. R. 4410.4400.]

The Minnesota EQB advises that a person proposing a project that requires an EIS should initiate the environmental review process as early as possible.¹⁷ In Minnesota, an "environmental assessment worksheet" must be completed before work begins on an EIS. The worksheet is a "brief document" compiled by the responsible government entity (for mining projects, the Minnesota DNR). The worksheet serves as the basis for a 30-day "scoping period," a process used to identify the significant issues relating to an EIS and to determine the permits for which information will be developed concurrently with an EIS.

For a mining project, the 30-day scoping period begins when the Minnesota DNR provides a press release containing notice of the availability of an environmental assessment worksheet for public review. During that process, interdependent components of the main project are identified. These interdependent components must be considered as a single project for the purpose of environmental review. [Minn. R. 4410.1000 and 4410.2000.]

¹⁶ An EIS may not be required for some so-called "scram" mining operations, in which iron ore or ore concentrates are extracted from previously developed stockpiles.

¹⁷ See Environmental Quality Board, *May 2010 Guide to Minnesota Environmental Review Rules*, at 8, <http://www.eqb.state.mn.us/documents/Guide%20to%20MN%20ER%20Rules-May%202010.pdf>.

After the scoping period, the Minnesota DNR must prepare to draft an EIS. To prepare, the Minnesota DNR will negotiate a cost agreement with the person proposing the project. After the DNR publishes a notice regarding the preparation of an EIS, it reviews and makes a decision regarding the adequacy of the EIS according to the timeline detailed below.

Other Approvals Required

In addition to a mining permit and an EIS, a person proposing a ferrous mine in Minnesota must obtain environmental and natural resource permits under state and federal laws. The specific permits required depend on the scope and characteristics of an individual mining project.

As an example, the following state permits were required for the most recent mine reactivation project in Minnesota: water appropriation permit; dam safety permit; public waters permit; Wetland Conservation Act permit; burning permit; takings permit (relating to endangered or threatened species protections); air emissions permit; water quality permit; wastewater discharge permit; industrial wastewater discharge permit; waste tire storage permit; storage tank permit; hazardous waste generator license; radioactive material registration; and local building and zoning permits.¹⁸

Where Minnesota's administrative rules governing mining conflict with other state statutes or rules, the most restrictive provision applies. [Minn. R. 6130.0300.] Thus, any regulations governing the siting of a mining operation or construction parameters governing features of the mining operation would be overruled by any more stringent requirements in other environmental provisions.

Public Hearings and Challenges

Unlike in Wisconsin, Minnesota does not have a "master hearing" process whereby the hearing regarding a mining permit is consolidated with the hearings available for related environmental and natural resource permits. Hearings regarding the EIS are also conducted separately.

With regard to a mining permit, the Minnesota DNR must hold a public hearing in response to a written objection submitted in a timely manner by a person who is "entitled to object." Persons entitled to object include those who own property which will be affected by the proposed mining operation and any federal, state, or local government agency with responsibilities affected by the proposed operation.

If no one who is entitled to object files a timely objection, the Minnesota DNR may nonetheless hold a hearing regarding the application for a mining permit, if it deems a hearing necessary to protect public health, safety, and welfare. [Minn. R. 6130.4800, subp. 2 (C).]

The hearing regarding the mining permit may include a contested case hearing. With a minor exception regarding the timing of service of process, the general rules governing contested case hearings apply to a mining permit hearing. [Minn. R. 6130.4800, subp. 2 (B.) (2) and 6130.5600.]

¹⁸ See Final Environmental Impact Statement, Keetac Mine Expansion, at 2-1, http://files.dnr.state.mn.us/input/environmentalreview/keetac/final_eis/keetac_mine_expansion_feis.pdf

As mentioned, the EIS is likely to require a more extensive process in Minnesota than does the mining permit. The environmental review process provides opportunities for public input at several stages. First, while creating the environmental assessment worksheet, discussed above, the Minnesota DNR must hold a 30-day public comment period. In addition, the department may hold one or more public meetings to gather comments regarding the worksheet if it determines that a meeting is "necessary or useful." [Minn. R. 4410.1600.] Second, the Minnesota EQB must hold a public meeting during the 30-day scoping period, discussed above. Third, the Minnesota DNR must offer an opportunity to comment and a public information meeting regarding a draft EIS in the county in which the project would occur. In addition, the Minnesota DNR must hold an additional public comment period on the final EIS, before rendering a decision regarding the adequacy of the EIS. Finally, after the decision is issued, Minnesota law provides a 30-day window for commencing a judicial challenge to the decision.

Timelines

Mining permit

The Minnesota DNR must render a decision regarding a mining permit by the 120th day after receiving an application or holding a hearing, if a hearing is requested. [Minn. Stat. s. 93.481.] If one or more valid objections are received and a hearing is held, the time limits are as follows: a written objection to an application for a mining permit is timely if it is filed within 30 days after the last advertisement required to be posted by the applicant over the course of four successive weeks, discussed above, is posted. Within 10 days after the receipt of an objection, the DNR must determine whether a person submitting an objection is entitled to object. If one or more persons who filed an objection are entitled to object, the DNR must schedule a hearing, to be held no more than 30 days after the last day of the 30-day objection period. [Minn. Stat. s. 93.481, subd. 2, and Minn. R. 6130.4800.] Adding the 120-day deadline with the timeframe for objections and a hearing, it appears that a decision regarding a mining permit must be issued within approximately 180 days after a complete permit application is received. However, this timeframe may now be shortened by Minnesota's general 150-day deadline goal for permit issuance, discussed below.

150-day requirement

Under a Minnesota law enacted in January 2011, it is "the goal of the state" that the Minnesota DNR and the Minnesota PCA issue or deny all environmental and resource management permits within 150 days of the submission of substantially completed permit applications. [Minn. Stat. ss. 84.027 and 116.03.] In addition, those agencies must notify an applicant whether an application is complete within 30 days of the receipt of a submitted application. If the permit is incomplete, the Minnesota DNR must identify where deficiencies exist and advise the applicant regarding how such deficiencies might be remedied. If no such notification is given, an application is deemed to be substantially complete from the day it was submitted.

It appears that the new 150-day standard applies to mining permits as well as most other Minnesota permits that would be required in connection with a mining project. However, neither the 120-day deadline for mining permit decisions, nor the 150-day deadline for environmental and resource management permits, applies to the environmental review process.

Environmental review

Minnesota law provides a detailed timeframe for the environmental review process. Assuming that no delays occur, a minimum of at least 500 days will generally elapse from the time that a project applicant submits data required for an environmental assessment worksheet to the Minnesota DNR until a final determination of adequacy regarding an EIS, although some of the time limits are subject to change pursuant to agreement between the DNR and an applicant. The specific timelines for the environmental review process are as follows:

- Within 30 days from submission of data for the environmental impact assessment worksheet, the Minnesota DNR reviews the data for completeness.
- Within five days of its decision regarding completeness of the data, the Minnesota DNR notifies the applicant of the decision. (If the data is found to be incomplete, the previous step and this step are repeated.)
- Within 30 days of the above notice, the Minnesota DNR prepares and approves a scoping environmental assessment worksheet and draft scoping decision document for public comment.
- Within five business days of its approval of the scoping environmental assessment worksheet, the Minnesota DNR submits a scoping notice for publication in the *EQB Monitor*.
- Within five business days of the submission of the notice to the *Monitor*, the Minnesota DNR provides a press release about the environmental assessment worksheet scoping to at least one newspaper of general circulation in the area of the proposed project.
- Within seven to 20 days from the receipt of the scoping notice, the notice is published in the *Monitor*.
- Within 15 business to 30 calendar days of the publication of the notice in the *Monitor*, the scoping period takes place, including a public meeting.
- Within 15 business days of the end of the scoping period, the Minnesota DNR issues a scoping decision document.
- Within 30 days of the scoping decision, the Minnesota DNR estimates the costs for the EIS and sends a draft cost agreement to the project applicant.
- Within 30 days of the applicant's receipt of the draft cost agreement, the applicant and the Minnesota DNR finalize the cost agreement, or the cost dispute is referred to the Minnesota EQB.
- Within 10 days of finalizing the cost agreement, the applicant pays 1/2 of the estimated costs to the Minnesota DNR, and the DNR hires necessary consultants.

- • Within 45 days of the Minnesota DNR's receipt of the cash payment, an EIS preparation notice is published in the *Monitor* and a press release is sent to a newspaper in the area of the project.
- Within 280 days of the publication of the EIS preparation notice, the Minnesota DNR prepares and distributes a draft EIS; holds a public information meeting and public comment period on the draft EIS; prepares and distributes a final EIS; holds a public comment period regarding the adequacy of the final EIS; and determines whether the EIS is adequate. This time limit may be extended by the consent of the applicant and the Minnesota DNR or by the Minnesota governor for good cause.

[Minn. R. ch. 4410.]

As a general rule, final decisions regarding permits identified during the environmental review process as required for the proposed project, including the mining permit and related environmental and natural resource permits, must be made within 90 days after the EIS is determined to be adequate. The 90-day period may be extended with the consent of the permit applicant or where a longer period is required by federal or state statute. [Minn. R. 4410.2900.]

Permitting History

In Minnesota, three taconite mine expansions or reactivations were approved in recent years. The average time to obtain the necessary permits for those projects was 2½ years. However, the state has not approved any new mining operations under its current mining laws, nor has it approved any mining permits since the enactment of the new 150-day requirement for permit processing.

MICHIGAN

Of the three states evaluated in this memorandum, Michigan's statutes and administrative rules regulating ferrous mining are the least specific as to how the mining application process is to proceed. Therefore, much of the analysis below is drawn from conversations with staff at the Michigan Department of Environmental Quality (DEQ).

Michigan statutes include a "Reclamation of Mining Lands" law, first enacted in 1970, *that formerly applied to all metallic mineral mining activities and still applies to ferrous mining.*¹⁹ [ss. 324.63101-324.63110, Mich. Comp. Laws.] The permit required under the Reclamation of Mining Lands law is variously referred to as Michigan's "ferrous mining permit," its "mining and reclamation permit," or its "metallic mineral mining permit." For purposes of this memorandum, this permit will be referred to as Michigan's "ferrous mining permit" because the Reclamation of Mining Lands law only applies to ferrous mining.

¹⁹ In 2004, Michigan enacted a separate, more comprehensive, statute regulating nonferrous metallic mining. [ss. 324.63201-324.63223, Mich. Comp. Laws.]

Other Approvals Required

In addition to the ferrous mining permit, various other approvals issued by the Michigan DEQ or other state, federal, or local entities may be required for a ferrous mineral mine to be approved, depending on the nature and the location of the mining project. These may include approvals related to wetlands, water withdrawal, air emissions, water discharge, solid waste, soil erosion, local zoning, and others. Most of the related approvals are evaluated using the same standards that apply to projects outside of the mining context. There are at least two exceptions, for local zoning and for various water-related approvals, for which unique statutory provisions apply to mining operations. [ss. 125.3205 and 324.3501, *et seq.*, Mich. Comp. Laws.]

Ferrous Mining Permitting Process

Pre-application process

A written notice must be sent to the Office of Oil, Gas and Minerals (OOGM) of the Michigan DEQ by any operator proposing to remove materials in connection with the production or extraction of ferrous minerals by open-pit mining methods. The notice must include information about the operator, the mineral to be mined, the location of mining property, the date mining will begin, and other information. [s. R 425.3, Mi. Adm. Code.]

Other pre-application procedures may apply to other approvals needed for approval of ferrous mining as provided under each of those other programs. For instance, in its air emissions program, Michigan offers an optional pre-application meeting to help the applicant with its preparation of the application.

Ferrous mining permit application

An application for a ferrous mining permit must be accompanied by an environment plan (discussed below), if requested by OOGM, and a mining and reclamation plan. OOGM solicits input from other divisions within the Michigan DEQ and from the Michigan Department of Natural Resources (DNR) as part of the review of an application. [s. 324.63103a, Mich. Comp. Laws; s. R 425.8, Mi. Adm. Code.]

The application for a reclamation plan must include information about the method and direction of mining activities; surface overburden stripping plans; provisions for grading, revegetation, and stabilization; locations and provisions for removal of buildings, equipment, stockpiles, and roads; hydrogeological characteristics of the surrounding area if mining activity below the water table is proposed; endangered or threatened species; and beneficiation and treatment methods and techniques, among other information. [s. 324.63103b, Mich. Comp. Laws.]

A "long range environment plan" related to the mine reclamation law is required to be submitted to OOGM "upon request" of the agency. The plan must include a detailed description of the mining area; the reclamation problems involved; the plans to prevent erosion and pollution, attain revegetation, and achieve ultimate reclamation of the mining area; the estimated plan schedule and cost; and comments by any surface rights holders, among other information. [s. R 425.8, Mi. Adm. Code.] According to OOGM staff, an environment plan would be requested by the agency in the early stages of

the permitting process for a new mine and would include much of the same analysis that Wisconsin requires in an EIS.

OOGM may obtain assistance from other programs in the Michigan DEQ and DNR for the evaluation of the environment plan. OOGM may reject or require modification of the environment plan for specified reasons, including if the plan does not conform to the requirements of the Reclamation of Mining Lands Act or rules administering the Act, or if OOGM determines that the plan is not feasible or is undesirable because of: erosion that will harm fish and wildlife, pollute public waters, or cause injury to people or property; failure to propose acceptable permanent vegetation of tailings basins and stockpiles; stabilization issues; or inadequate cleanup of the plant site and mining areas. [s. R 425.9, Mi. Adm. Code.] Once approved, the plan is referred to as the "reclamation plan" for the mine. [s. R 425.9 (3), Mi. Adm. Code.]

Standards for approval

Unlike the newer nonferrous minerals mining law in Michigan, the Reclamation of Mining Lands law does not contain specific standards that the Michigan DEQ must apply in making its decision on a ferrous mining permit, other than in the evaluation of the environment plan. Other approvals that are required for ferrous mining are reviewed based on the specific guidelines or standards as set forth in the separate regulatory programs.

Environmental review

A separate environmental analysis is generally not required under Michigan law for environmental permits. Instead, the environmental impacts of a proposed activity are evaluated as part of the permit review process. DEQ staff have reported that EIS-like considerations are generally made as part of the each permitting process, especially with respect to potentially complicated activities like mining.

This approach is apparently due, at least in part, to the Michigan Environmental Protection Act (MiEPA) which provides broad standing for people to seek judicial recourse against the agency and permittees with respect to "protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction." [s. 324.1701 (1), Mich. Comp. Laws.]

Public hearings and challenges

When an application for a ferrous mining permit is submitted to OOGM, a formal public notice process is conducted, and a 30-day comment period is provided. DEQ reports that it may hold a public informational meeting early in the permit review process at a location near the proposed mining operation to provide an opportunity for the applicant to explain the proposed operation to the public, particularly if it is a major or controversial project. Other public hearings may be held during the permit review process at the discretion of OOGM, on its own initiative or in response to a request. OOGM also provides an opportunity for the public to examine and comment on a ferrous mining permit application when it publishes a notice of intent to issue a ferrous mining permit.

Generally, "an interested person who feels aggrieved by an action or inaction" of OOGM may "request a contested hearing on the matter involved." The decision in the contested case hearing is

subject to judicial review. [s. R 425.49 (3), Mi. Adm. Code.] According to OOGM staff, this can result in numerous contested case hearings being held during a mining permit application process, even with respect to questions that are not necessarily determinative as to whether an applicant will be awarded a permit, such as the decision of OOGM that a ferrous mining permit application is accurate and complete.

Process timelines

There is no overall deadline from the submittal of the initial application before which the final decision on the permit must be made. There is a final permit decision deadline, which begins once the application is determined to be administratively complete. Also, there are other segments of the permitting process within which certain deadlines must be met, as follows:

- The written notice that is required to be provided to OOGM by any prospective ferrous mining permit applicant must be sent at least 30 days prior to beginning any mining activity in a new mining area. [s. R 425.4, Mi. Adm. Code.]
- OOGM has 60 days to review a ferrous mining permit application and determine if it is accurate and complete. If the application is not accurate and complete, OOGM must inform the applicant, within the 60-day period, of changes or additional information is needed.
- OOGM has 30 days to respond as to the accuracy and completeness of the application after receiving changes or additional information from the applicant.
- OOGM has 60 days from the date when an application is determined to be accurate and complete to approve or deny the permit. [s. 324.63103b, Mich. Comp. Laws.]

OOGM reports that it would consider a requested environment plan, described above, to be part of the application for a ferrous mining permit and thus the environment plan would have to be "accurate and complete" prior to the commencement of the 60-day final decision period for the permit.

For other approvals that may be needed for a ferrous mine, the Michigan statutes provide for specific application processes. These processes generally include specified time periods within which a permit decision must be made--for instance 180 days for air emission permits. Prior to the commencement of any review period, the administering agency must generally make a finding that the permit application is technically complete. DEQ staff report that an application is not considered to be technically complete until it contains sufficient information to support an agency decision on the permit if challenged under MiEPA, as described above.

Permitting History

No new ferrous mines have been permitted under Michigan's Reclamation of Mining Lands law. According to OOGM, the only permits issued under this law to date have been for two mines that were in operation at the time this law was enacted. The average time that it took to process the ferrous mining permits for these existing mines was 2½-3 years. This time period did not include approval of other permits or approvals that would be necessary for a new ferrous mine.

CONCLUSION

Wisconsin, Minnesota, and Michigan each require a person who proposes to mine ferrous minerals to obtain both a mining permit and all other environmental and natural resource permits required for a given project. In general, such approvals are not modified for mining projects, although some exceptions apply in Wisconsin and Michigan.

In Wisconsin and Minnesota, an applicant for a ferrous mining permit must undergo a separate environmental review process, culminating with an EIS. In Michigan, environmental review generally appears to be integrated into the approval process for each environmental and natural resource permit otherwise required. In Minnesota and Wisconsin, the environmental review process is separate from all other permits and may represent the most resource-intensive step of the process for obtaining authority to engage in ferrous mining. The environmental review process is a particularly prominent component of the process in Minnesota, where an EIS serves as an umbrella review in which all other required permits and approvals are identified, and where no other permit may be issued prior to a determination that a final EIS is adequate.

In both Minnesota and Michigan, different standards govern nonferrous and ferrous mines. In both of those states, new statutes or rules were enacted during the past several decades to address nonferrous mining, while ferrous mining is governed by preexisting statutes and regulations that were created for all metallic mining. In general, Wisconsin law applies the same standards to ferrous and nonferrous mining, except that it imposes additional showings that must be made for sulfide mining.²⁰

Of the three states, Wisconsin has the most detailed standards governing issuance of a ferrous mining permit. With the exception of Minnesota's new 150-day permit approval law, both Minnesota and Michigan appear to defer more than Wisconsin does to agency rule-making and agency discretion in this context.

All three states have specific statutory or regulatory timelines for final decisions regarding ferrous mining permits. The timelines are as follows: in Wisconsin, 90 days from the completion of the record for the master hearing, which must be held within 180 days of the release of the final EIS; in Minnesota, 120 days from any hearing on the application; and in Michigan, 60 days from the date an application is determined to be accurate and complete. Neither Wisconsin nor Michigan require the reviewing agency to determine that an application is complete within a specific timeframe, whereas Minnesota law sets such deadlines under both its ferrous mining regulations and its new 150-day permit review law. Thus, Minnesota law arguably provides the most predictability for a permit applicant. However, note that Minnesota's separate environmental review process requires more than 500 days.

Any general comparisons among the three states' ferrous mining permitting processes may be of limited utility, in part for the following reasons:

²⁰ Under current law, the Wisconsin DNR is prohibited from issuing a permit for the mining of a sulfide ore body unless DNR determines, based on information provided by a mining permit applicant and verified by DNR, that similar sulfide mining operations, with certain restrictions, have been operated and closed without polluting groundwater or surface water from acid drainage or from the release of heavy metals or other significant environmental pollution. [s. 293.50, Stats.] This requirement is titled the "sulfide mining moratorium law."

- **No “typical” cases.** Because no new ferrous mining operations have been approved under any of the three states’ existing laws, there are no practical examples regarding the timeline and procedures for approval of new ferrous mining projects. In Wisconsin, the DNR estimates that all necessary approvals will require a process lasting between 2½-4 years. In both Minnesota and Michigan, projects have received necessary approvals within 2½-3 years. However, the approved projects in Minnesota and Michigan have been reactivations or expansions of already existing mines; no wholly new ferrous mine operations have been approved.
- **The scope of the mining permit may affect the feasible timeline for agency decisions.** In both Michigan and Minnesota, the mining permit approval process is largely separate from approvals for other environmental permits. In contrast, the Wisconsin mining permit approval process is fairly integrated with the approval process for related permits, with a single “master hearing” held to consider all permits (and the final EIS) concurrently. In addition, in Wisconsin, the issuance of a mining permit is contingent on other approvals, whereas neither Minnesota nor Michigan make the approval of a mining permit contingent on the issuance of other environmental permits and approvals (with the exception of the EIS in Minnesota). Also, of the three states, Wisconsin has the most detailed standards governing the issuance of a mining permit. In the other two states, some issues addressed in the Wisconsin mining permit may instead be addressed in other permits or within the scope of environmental review. Because of these differences, distinctions regarding the different time schedules for approval of a mining permit may be of limited significance.
- **Deadlines for mining permit decisions do not necessarily reflect environmental review.** As mentioned, Minnesota’s 150-day permit goal arguably provides the most stringent goal for decisions regarding mining permits among the three states. However, the 150-day requirement does not apply to the environmental review process, which is a prerequisite to the issuance of a mining permit in Minnesota. In contrast, the timeline for a final decision on a mining permit in Wisconsin also applies to the approval of the final EIS.
- **Varying standard operating procedures.** To varying degrees, the states rely on standard operating procedures that may not be reflected in codified law. Because no new (i.e., other than expanded or reactivated) ferrous mine operations have been permitted under the existing laws in any of the three states, regulators and industry representatives must speculate about how the permitting process for a new ferrous mine site would be conducted in practice, especially with respect to permitting timelines.
- **Importance of federal role.** This memorandum describes state permits and procedures governing ferrous mining, but any impact of differing state approaches may be limited by federal law. Most large ferrous mining projects, particularly those that affect wetlands or navigable waters, are likely to implicate federal as well as state permitting processes. In addition, some permits issued by states, such as air emissions and water discharge permits, are issued under authority conferred on the states by the federal government. For such permits, the states’ continued authority depends on state compliance with federal standards.

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

LAK:AH:wu



Legislative Fiscal Bureau

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January 6, 2012

TO: Representative Janet Bewley
Room 420 North, State Capitol

FROM: Sean Moran, Fiscal Analyst

SUBJECT: Proposed Alternative Mining Tax

At your request, I am providing information regarding your proposal to replace the net proceeds occupational tax on ferrous metallic mining imposed under current law with a tax structure similar to Minnesota's taconite production tax. The proposal would not alter the net proceeds occupational tax on nonferrous metallic mining. Nor would it alter the current law imposition and distribution of the notice of intent fee or the construction fee imposed on ferrous mining activity. In addition, I am providing information regarding potential tax revenues under the proposed tax structure for Gogebic Taconite's proposed mining operation in northern Wisconsin.

Metalliferous Mining Tax -- Current Law

Wisconsin imposes a net proceeds occupational tax on state metalliferous mining operations. The mining tax is imposed using a progressive, bracket-based rate structure that is indexed to the annual change in the gross national product (GNP) deflator for June of the current year compared to June of the previous year, subject to a maximum yearly increase of 10%. The table below shows the tax rate structure that was in effect for calendar year 2010. Persons mining metalliferous minerals must file a report with, and remit taxes to, the Department of Revenue (DOR) on or before June 15 reflecting net proceeds and metalliferous mining taxes due for the prior calendar year.

2010 Mining Tax Rate Structure

Net Proceeds			Rate
\$0	to	\$516,700	0%
516,701	to	10,335,900	3
10,335,901	to	20,671,800	7
20,671,801	to	31,007,900	10
31,007,901	to	41,344,100	13
41,344,101	to	51,679,600	14
51,679,601	or	more	15

The tax is determined by adding together the gross proceeds from mining and subtracting allowable deductions. Current law enumerates specific deductions, such as the actual costs of labor and supplies in mining, costs of extracting and processing the ore, costs of mining related services, federal and state taxes paid, and site reclamation and restoration costs.

The most recent mining operation in the state was the Flambeau mine in Rusk County. As a result of this mining activity, the state collected net proceeds taxes of approximately \$510,000 in 1993-94, \$6.13 million in 1994-95, \$6.41 million in 1995-96, \$1.07 million in 1996-97, and \$30,000 in 1997-98. The mine closed operations in 1997 and the mine site was reclaimed in 1998. No revenues have been generated from that mine since 1997-98.

All revenues generated from the tax are deposited in the Investment and Local Impact Fund (ILIF), which is a segregated account administered by the Investment and Local Impact Fund Board (ILIFB). The fund was established in 1977 to provide financial assistance to local units of government experiencing social, educational, environmental, or economic impacts associated with metalliferous mining. The ILIFB is attached to DOR for administrative purposes and consists of eleven members, including: (a) the chief executive officer of the Wisconsin Economic Development Corporation or his or her designee; (b) the Secretary of DOR or his or her designee; (c) three public members; (d) five local officials consisting of two municipal officials, two county officials, and one school board member; and (e) one Native American. The public members, local officials, and Native American member must be appointed by the Governor for staggered four-year terms, subject to certain criteria enumerated in statute. It should be noted that no members are currently appointed to the Board.

Current law requires that net proceeds taxes deposited into the ILIF must be used for specified purposes. Eligible counties, cities, towns, villages, and tribes that are affected by mining activity must be paid a first-dollar payment from the ILIF. A first dollar payment is defined as an amount equal to \$100,000, indexed for inflation against the GNP deflator. For 2010-11, the first-dollar payment is \$206,700. Eligible counties must also receive an additional payment of 20% of the tax collected, annually, from persons extracting metallic minerals in the county up to \$250,000 (indexed for inflation against the GNP deflator). For 2010-11, the additional payment to counties may not exceed \$516,800, annually. Ten percent of the tax paid by each mine to the fund, plus all

accrued interest on that amount, must be retained by the Board to: (a) ensure an annual payment to each county, city, town, village, and school district in an amount equal to the average payment for the three previous years; (b) reimburse counties, municipalities, and school districts for costs associated with the cessation of mining; and (c) indemnify counties, municipalities, and school districts for reclamation expenses.

The ILIFB may award discretionary monies to affected counties, cities, towns, villages, school districts, tribes, and local impact committees. Discretionary payments may be made to these entities to pay for certain reasonable expenses for the purposes permitted under state law. In addition, if a mine is abandoned and must be reclaimed, certain payments must be made to the Department of Natural Resources (DNR) for long-term care of mining waste sites and environmental repair for mining waste sites.

Minnesota Taconite Production Tax

Minnesota imposes a unit-based taconite production tax on the total taxable tonnage (defined as 2,240 lbs. per ton) of concentrates or pellets produced by taconite companies. For 2010, Minnesota imposed a production tax rate, payable in 2011, of \$2.380 per taxable ton. Minnesota defines a taxable ton as the average number of tons produced during the current year and the two previous years. Minnesota's tax rate is indexed to reflect annual increases in the gross domestic product implicit price deflator. Minnesota collected approximately \$72.4 million in taconite production taxes in 2010. Similar to Wisconsin law, revenues generated from this tax are distributed to various cities, townships, counties, and school districts affected by mining activity, and revenues are also allocated to certain funds and programs dedicated to environmental protection, economic development, and assistance programs for cities and townships affected by the taconite mining industry. In fiscal year 2010-11, Minnesota provided additional general fund revenues of \$6.7 million that was distributed as if the revenue were generated by 2010 taconite production taxes.

Proposed Tax Imposition

Under the proposed tax structure, ferrous metallic mining companies would be exempt from the net proceeds occupational tax under current law. Instead, similar to Minnesota's taconite production tax, ferrous metallic mining companies would be subject to a unit-based ferrous metal severance tax on the total taxable tonnage (defined as 2,240 lbs. per ton) of concentrates or pellets produced by ferrous metallic mining companies. Under the proposal, a taxable ton would be defined as the average number of tons produced during the current year and the two previous years; however, if production did not occur in a given year, that year would be excluded from calculation of the tax. The ferrous metal severance tax would be statutorily imposed at a rate of \$2.380 per taxable ton for 2010, and would be adjusted annually by multiplying the prior year's rate by the percentage change in the gross domestic product implicit price deflator from the fourth quarter of the second preceding year to the fourth quarter of the preceding year. The proposal would not modify the current law imposition of the net proceeds occupational tax for nonferrous metallic

mining companies.

According to NorthStar Economics, Inc.'s economic impact analysis of the mine proposed by Gogebic Taconite for northern Wisconsin, the proposed mine is estimated to produce eight million tons of taconite per year. If the mine had been in operation in 2010 under the proposed taxing structure and had generated eight million taxable tons of taconite, it is estimated that the taconite severance tax would have generated \$19 million of revenue that would have been deposited into the ILIF in 2010-11.

I hope this information responds to your request, please contact me with any further questions.

SM/lb



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0285/P1
RCT&JK...

Tuesday, 1/17, if possible

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2011 ASSEMBLY BILL 426

note

Ben

1 AN ACT...; relating to: environmental review of proposed iron mines, the process
2 for issuance of mining permits and other approvals for iron mines, and taxes
3 imposed on iron mining operations.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 70.375 (2) (a) of the statutes is amended to read:
5 70.375 (2) (a) ~~In~~ [✓] Except as provided in sub. (7), with respect to mines not in
6 operation on November 28, 1981, there is imposed upon persons engaged in mining
7 metalliferous minerals in this state a net proceeds occupation tax effective on the
8 date on which extraction begins to compensate the state and municipalities for the
9 loss of valuable, irreplaceable metalliferous minerals. The amount of the tax shall
10 be determined by applying the rates established under sub. (5) to the net proceeds

1 of each mine. The net proceeds of each mine for each year are the difference between
2 the gross proceeds and the deductions allowed under sub. (4) for the year.

History: 1977 c. 31, 272; 1979 c. 32 s. 92 (1); 1981 c. 86, 314; 1983 a. 27 ss. 1184b to 1184m, 1803g, 1803r, 2202 (45); 1985 a. 29; 1987 a. 27; 1987 a. 312 ss. 1, 17; 1991 a. 39; 1993 a. 112; 1995 a. 27, 225, 227; 1997 a. 27, 237; 2005 a. 347.

3 **SECTION 2.** 70.375 (5) (intro.) of the statutes is amended to read:

4 70.375 (5) RATES. (intro.) The Except as provided in sub. (7), the tax to be
5 assessed, levied and collected upon persons engaging in mining metalliferous
6 minerals in this state shall be computed at the following rates:

History: 1977 c. 31, 272; 1979 c. 32 s. 92 (1); 1981 c. 86, 314; 1983 a. 27 ss. 1184b to 1184m, 1803g, 1803r, 2202 (45); 1985 a. 29; 1987 a. 27; 1987 a. 312 ss. 1, 17; 1991 a. 39; 1993 a. 112; 1995 a. 27, 225, 227; 1997 a. 27, 237; 2005 a. 347.

7 **SECTION 3.** 70.375 (6) of the statutes is amended to read:

8 70.375 (6) INDEXING. ~~For~~ Except as provided in sub. (7), for calendar year 1983
9 and corresponding fiscal years and thereafter, the dollar amounts in sub. (5) and s.
10 70.395 (1) and (2) (d) 1m. and 5. a. and (dg) shall be changed to reflect the percentage
11 change between the gross national product deflator for June of the current year and
12 the gross national product deflator for June of the previous year, as determined by
13 the U.S. department of commerce as of December 30 of the year for which the taxes
14 are due, except that no annual increase may be more than 10%. For calendar year
15 1983 and corresponding fiscal years and thereafter until calendar year 1997 and
16 corresponding fiscal years, the dollar amounts in s. 70.395 (1m), 1995 stats., shall be
17 changed to reflect the percentage change between the gross national product deflator
18 for June of the current year and the gross national product deflator for June of the
19 previous year, as determined by the U.S. department of commerce as of December
20 30 of the year for which the taxes are due, except that no annual increase may be
21 more than 10%. The revised amounts shall be rounded to the nearest whole number
22 divisible by 100 and shall not be reduced below the amounts under sub. (5) on
23 November 28, 1981. Annually, the department shall adopt any changes in dollar

1 amounts required under this subsection and incorporate them into the appropriate
2 tax forms.

History: 1977 c. 31, 272; 1979 c. 32 s. 92 (1); 1981 c. 86, 314; 1983 a. 27 ss. 1184b to 1184m, 1803g, 1803r, 2202 (45); 1985 a. 29; 1987 a. 27; 1987 a. 312 ss. 1, 17; 1991 a. 39; 1993 a. 112; 1995 a. 27, 225, 227; 1997 a. 27, 237; 2005 a. 347.

3 **SECTION 4.** 70.375 (7) of the statutes is created to read:

4 70.375 (7) PER TON RATE. (a) Notwithstanding subs. (2), (5), and (6), for mines
5 in operation after December 31, 2011, the tax assessed, levied, and collected from a
6 person engaged in mining metalliferous minerals in this state is an amount equal to
7 \$2.38 for each 2,240 pounds of mining product sold, based on the average annual
8 amount sold during the current year and the previous 2 years, not including any year
9 in which no metalliferous minerals are extracted in this state.

10 (b) Beginning in 2013, and in each year thereafter, the department shall change
11 the dollar amounts under par. (a) and s. 70.395 (2) (dc) 1., 2., and 3. to reflect the
12 percentage change between the gross domestic product deflator for June of the
13 current year and the gross domestic product deflator for June of the previous year,
14 as determined by the ^{Federal} U.S. department of commerce on December 30 of the year in
15 which the taxes are due.

16 **SECTION 5.** 70.395 (2) (dc) 1. of the statutes is amended to read:

17 70.395 (2) (dc) 1. Each person intending to submit an application for a mining
18 permit shall pay ~~\$50,000~~ \$100,000, as adjusted under s. 70.375 (7) (b), to the
19 department of revenue for deposit in the investment and local impact fund at the
20 time that the person notifies the department of natural resources under s. 293.31 (1)
21 or 293.495 (2) of that intent.

History: 1977 c. 31, 185, 423; 1979 c. 34 s. 2102 (46) (c); 1979 c. 63; 1979 c. 175 s. 53; 1981 c. 86 ss. 27 to 36, 71; 1981 c. 374 s. 150; 1983 a. 27 ss. 1184u to 1185r, 2202 (38) and (45); 1983 a. 410 ss. 22, 2202 (38); 1985 a. 29 ss. 1214s to 1214z, 3200 (46) (a); 1985 a. 332 s. 253; 1987 a. 399; 1989 a. 31; 1991 a. 39, 259; 1995 a. 27, 227; 1997 a. 27; 1999 a. 32.

22 **SECTION 6.** 70.395 (2) (dc) 2. of the statutes is amended to read:

1 70.395 (2) (dc) 2. A person making a payment under subd. 1. shall pay an
2 additional ~~\$50,000~~ \$100,000, as adjusted under s. 70.375 (7) (b), upon notification by
3 the board that the board has distributed 50% of the payment under subd. 1.

History: 1977 c. 31, 185, 423; 1979 c. 34 s. 2102 (46) (c); 1979 c. 63; 1979 c. 175 s. 53; 1981 c. 86 ss. 27 to 36, 71; 1981 c. 374 s. 150; 1983 a. 27 ss. 1184u to 1185r, 2202 (38) and (45); 1983 a. 410 ss. 22, 2202 (38); 1985 a. 29 ss. 1214s to 1214z, 3200 (46) (a); 1985 a. 332 s. 253; 1987 a. 399; 1989 a. 31; 1991 a. 39, 259; 1995 a. 27, 227; 1997 a. 27; 1999 a. 32.

4 **SECTION 7.** 70.395 (2) (dc) 3. of the statutes is amended to read:

5 70.395 (2) (dc) 3. A person making a payment under subd. 2. shall pay an
6 additional ~~\$50,000~~ \$100,000, as adjusted under s. 70.375 (7) (b), upon notification by
7 the board that the board has distributed all of the payment under subd. 1. and 50%
8 of the payment under subd. 2.

History: 1977 c. 31, 185, 423; 1979 c. 34 s. 2102 (46) (c); 1979 c. 63; 1979 c. 175 s. 53; 1981 c. 86 ss. 27 to 36, 71; 1981 c. 374 s. 150; 1983 a. 27 ss. 1184u to 1185r, 2202 (38) and (45); 1983 a. 410 ss. 22, 2202 (38); 1985 a. 29 ss. 1214s to 1214z, 3200 (46) (a); 1985 a. 332 s. 253; 1987 a. 399; 1989 a. 31; 1991 a. 39, 259; 1995 a. 27, 227; 1997 a. 27; 1999 a. 32.

9 **SECTION 8.** 293.01 (4e) of the statutes is created to read:
10 293.01 (4e) "Ferrous mineral" means an ore or earthen material in natural
11 deposits in or on the earth that primarily exists in the form of an iron oxide, including
12 taconite and hematite.
13 taconite and hematite.

14 **SECTION 9.** 293.01 (4m) of the statutes is created to read:

15 293.01 (4m) "Ferrous mining" means the mining of ferrous minerals at a
16 mining site where the department determines that it is not likely that any of the
17 disturbed areas will contain significant amounts of sulfide minerals.

18 **SECTION 10.** 293.32 of the statutes is amended to read:

19 **293.32 Prospecting and mining fees.** (1) When a person gives notice under
20 s. 293.31 (1) or 293.495 (2), the person shall pay a fee established by the department
21 by rule designed to cover the costs incurred by the department in connection with the
22 proposed prospecting or mining during the year following receipt of the notice, other

1 than any costs related to the environmental impact statement for the proposed
2 prospecting or mining.

3 (2) The department shall annually compare the fees paid under this section
4 and under chs. 30, 280 to 292 and 295 to 299 in connection with proposed prospecting
5 or mining for which notice has been given under s. 293.31 (1) or 293.495 (2) with the
6 costs incurred by the department in connection with that proposed prospecting or
7 mining, including the costs incurred under chs. 30, 280 to 292 and 295 to 299 but
8 excluding costs related to the environmental impact statement. If the costs incurred
9 exceed the fees paid, the person who notified the department shall pay a fee equal
10 to the amount by which the costs exceed the fees previously paid.

11 (3) When the department issues or denies a prospecting or mining permit or
12 when a person who gave notice under s. 293.31 (1) or 293.495 (2) ceases to seek
13 approval of the proposed prospecting or mining project, the department shall
14 compare the fees paid under this section and under chs. 30, 280 to 292 and 295 to 299
15 in connection with the proposed prospecting or mining with the costs incurred by the
16 department in connection with the proposed prospecting or mining, including the
17 costs incurred under chs. 30, 280 to 292 and 295 to 299 but excluding costs related
18 to the environmental impact statement. If the costs incurred are less than the fees
19 paid, the department shall pay the person who gave notice the amount by which the
20 fees exceed the costs. If the costs incurred exceed the fees paid, the person who
21 notified the department shall pay a final fee equal to the amount by which the costs
22 exceed the fees previously paid.

History: 1997 a. 169.

23 **SECTION 11.** 293.33 (3) of the statutes is amended to read:

1 293.33 (3) Persons giving notice under s. 293.31 (1) or [✓]293.495 (2) shall
2 thereafter appoint a liaison person to any committee established under sub. (1) or (2),
3 and shall provide such reasonable information as is requested by the committee.
4 Operators and persons giving notice under s. 293.31 shall thereafter make
5 reasonable efforts to design and operate mining operations in harmony with
6 community development objectives.

History: 1995 a. 227 s. 761.

7 **SECTION 12.** 293.39 (4) ^{and (5) are} of the statutes ^(s) created to read:

8 293.39 (4) (a) A person proposing to engage in ferrous mining shall prepare and
9 submit to the department an environmental impact report for the ferrous mining
10 project.

11 (b) The department shall determine whether an environmental impact report
12 submitted under par. (a) or (c) is complete no later than 30 days after receiving the
13 environmental impact report. The department shall notify the person submitting
14 the environmental impact report of its determination no later than 5 days after
15 making the determination.

16 (c) If the department determines that an environmental impact report
17 submitted under par. (a) is incomplete, the person proposing to engage in ferrous
18 mining shall prepare and submit to the department a revised environmental impact
19 report for the ferrous mining project.

20 (d) No more than 30 days after providing notification under par. (b) that an
21 environmental impact report is complete, the department shall prepare a draft
22 scoping statement consisting of at least the following: a description of known
23 governmental approvals or reviews required for the ferrous mining project; a
24 description of the issues to be covered in the environmental impact statement;

1 alternatives that will be addressed in the environmental impact statement;
2 identification of areas potentially affected by the project and by related actions; and
3 identification of necessary studies requiring compilation of existing information or
4 the development of new data that can be generated within a reasonable amount of
5 time and at a reasonable cost.

6 (e) No more than 10 days after completing its responsibilities under par. (d),
7 the department shall publish a class 1 notice, under ch. 985, in a newspaper with
8 general circulation in the area in which the proposed site is located and in the official
9 state newspaper, that includes all of the following:

- 10 1. The name and location of the proposed ferrous mining project.
- 11 2. A brief description of the proposed project.
- 12 3. The location at which copies of the environmental impact report and draft
13 scoping statement are available for review.
- 14 4. The description of the opportunity to comment on the appropriate scope of
15 the environmental impact statement for the project.
- 16 5. A statement that the period for written comment expires 30 days after the
17 date of publication of the notice.
- 18 6. The procedures for commenting.
- 19 7. The date, time, and place of the public informational meeting under par. (g).

20 (f) The department shall also provide the notice under par. (e) to the person who
21 submitted the environmental impact report, the U.S. army corps of engineers, the
22 federal environmental protection agency; the ^{e U.S.} federal fish and wildlife service, the
23 state historical society, any federally recognized American Indian tribe or band that
24 may be affected by the proposed project, and any local governmental unit in which
25 the project will take place.

1 (g) At least 10 days, but not more than 20 days after publication of the notice
2 under par. (e), the department shall hold at least one public informational meeting
3 to discuss the scope of the environmental impact statement.

4 (h) The department shall issue its final decision on the scope of the
5 environmental impact statement no later than 15 days after the the end of the public
6 comment period. The department shall include at least all of the following in the
7 scoping decision: a description of known governmental approvals or reviews required
8 for the ferrous mining project; a description of the issues to be covered in the
9 environmental impact statement; alternatives that will be addressed in the
10 environmental impact statement; identification of areas potentially affected by the
11 project and by related actions; and identification of necessary studies requiring
12 compilation of existing information or the development of new data that can be
13 generated within a reasonable amount of time and at a reasonable cost.

14 (i) No later than 30 days after it issues the scoping decision, the department
15 shall submit to the person who submitted the environmental impact report a draft
16 cost agreement. The agreement shall include the estimated cost of preparing the
17 environmental impact statement and a brief description of the tasks and the cost of
18 each task to be performed by each party in preparing and distributing the
19 environmental impact statement. The person may request changes in the cost
20 agreement. If, within 30 days after the person receives the draft cost agreement, the
21 department and the person have not signed a cost agreement, either party may refer
22 the matter to the secretary of administration for resolution.

23 (im) No later than 10 days after finalizing the cost agreement under par. (i), the
24 person entering into the cost agreement with the department shall pay to the
25 department 50 percent of the estimated costs under the cost agreement.

1 (j) No later than 45 days after receiving the payment under par. (im), the
2 department shall publish a class 1 notice, under ch. 985, in at least one newspaper
3 of general circulation in each county where the project will occur and in the official
4 state newspaper, containing a summary of the scoping decision.

5 (k) After the department publishes the notice under par. (j), the department
6 shall prepare a preliminary environmental impact statement for the proposed
7 ferrous mining project in accordance with the scoping decision. When the
8 preliminary environmental impact statement is complete, the department shall
9 make it available for public review and comment and shall publish a class 1 notice,
10 under ch. 985, of completion of the preliminary environmental impact statement, of
11 the ability to comment on the preliminary environmental impact statement, and of
12 the date, time, and place of the public meeting under par. (L) in at least one
13 newspaper of general circulation in each county where the project will occur and in
14 the official state newspaper. The department shall also distribute a summary of the
15 preliminary environmental impact statement and notice of the date, time, and place
16 of the meeting under par. (L) to the person who submitted the environmental impact
17 report, the U.S. army corps of engineers, the federal environmental protection
18 agency, the federal fish and wildlife service, the state historical society, any federally
19 recognized American Indian tribe or band that may be affected by the proposed
20 project, any local governmental unit in which the project will take place, any person
21 that submitted substantive comments within the comment period on the
22 environmental impact report and the draft scoping statement, and any person
23 requesting the summary.

24 (L) Not less than 15 days after publication of the notice under par. (k), the
25 department shall conduct a public informational meeting on the adequacy of the

1 preliminary environmental impact statement in a county in which at least part of the
2 proposed mining site is located. The department shall receive public comments on
3 the adequacy of the preliminary environmental impact statement for at least 10 days
4 after the day on which it conducts the public informational meeting.

5 (m) The department shall prepare a final environmental impact statement,
6 taking into consideration the comments received under par. (L). When the final
7 environmental impact statement is complete, the department shall make it available
8 for public review and comment and shall publish a class 1 notice, under ch. 985, of
9 completion of the final environmental impact statement, of the ability to submit
10 written comments on the final environmental impact statement, and of the date by
11 which comments must be submitted, in at least one newspaper of general circulation
12 in each county where the project will occur and in the official state newspaper. The
13 department shall also distribute a summary of the final environmental impact
14 statement to the person who submitted the environmental impact report, the U.S.
15 army corps of engineers, the federal environmental protection agency, the federal
16 fish and wildlife service, the state historical society, any federally recognized
17 American Indian tribe or band that may be affected by the proposed project, any local
18 governmental unit in which the project will take place, any person that submitted
19 substantive comments within the comment period on the preliminary environmental
20 impact statement, and any person requesting the summary.

21 (n) The department shall accept written comments on the adequacy of the final
22 environmental impact statement for at least 10 days after the day on which the notice
23 under par. (m) is published. The department shall make the determination of
24 adequacy of the final environmental impact statement at least 10 days after
25 publication of the notice of availability of the final environmental impact statement.

1 The department shall make the determination of adequacy of the final
2 environmental impact statement within 280 days after publication of the notice
3 under par. (j) unless the time is extended by consent of the person submitting the
4 environmental impact report or by the governor for good cause.

5 (o) If the department determines that the environmental impact statement is
6 inadequate, the department shall prepare an adequate environmental impact
7 statement within 60 days of that determination. When the adequate environmental
8 impact statement is complete, the department shall publish a class 1 notice, under
9 ch. 985, of completion of the environmental impact statement in at least one
10 newspaper of general circulation in each county where the project will occur and in
11 the official state newspaper. The department shall also distribute a summary of the
12 adequate environmental impact statement to the person who submitted the
13 environmental impact report, the U.S. army corps of engineers, the federal
14 environmental protection agency, the federal fish and wildlife service, the state
15 historical society, any federally recognized American Indian tribe or band that may
16 be effected by the proposed project, any local governmental unit in which the project
17 will take place, any person that submitted substantive comments within the
18 comment period on the previous version of the environmental impact statement, and
19 any person requesting the summary.

20 (5) (a) The department may not issue a mining permit or any other approval
21 required in connection with a ferrous mining project before it determines that the
22 environmental impact statement for the project is adequate.

23 (b) Within 90 days after the determination of adequacy of a final environmental
24 impact statement, the department shall make final decisions on those approvals
25 that were identified as required in the scoping process and for which information was

1 developed concurrently with the preparation of the environmental impact
2 statement, except as follows:

3 1. The department[✓] may extend the 90-day period with the consent of the
4 applicant.

5 2. The 90-day period does not apply if a longer period is required for an
6 approval by federal law or state statute.

7 **SECTION 13.** 293.49 (1) (a) 3. of the[✓] statutes is amended to read:

8 293.49 (1) (a) 3. In the case of a surface mine, the site is not unsuitable for
9 mining. The preliminary determination that a site was not unsuitable for mining
10 under s. 293.45 may not be conclusive in the determination of the site's suitability
11 for mining under this section. However, for mining other than ferrous mining, at the
12 hearing held under this section and s. 293.43, testimony and evidence submitted at
13 the prospecting permit proceeding relevant to the issue of suitability of the proposed
14 mining site for surface mining may be adopted, subject to the opportunity for
15 cross-examination and rebuttal, if not unduly repetitious.

16 History: 1995 a. 227 s. 771, 773, 777, 778, 779, 994; 1997 a. 171.

16 **SECTION 14.** 293.495 of the statutes is created to read:

17 **293.495 Process for ferrous mining. (1) APPLICABILITY OF OTHER PROVISIONS.**

18 The following provisions do not apply to proposed ferrous mining projects:

19 (a) Section 293.31.[✓]

20 (b) Section 293.37 (2) (d).[✓]

21 (c) Section 293.43.[✓]

22 (d) The time limit in s. 293.49 (1) (a) (intro.) and (2) (intro.).[✓] [✓]

23 (e) Section 293.49 (1) (a) 2.[✓]

24 (f) section 293.55 (1) (c) to (e).[✓] [✓] [✓]

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g
The authority in s. 293.65 (2) (h) to conduct a hearing on a permit under s. 293.65 as part of the hearing on the application for a mining permit.

h
Section 293.65 (2) (i).

4

(2) NOTICE OF INTENT. At least 12 months before submitting an application for

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a mining permit under s. 293.37 or an environmental impact report under s. 293.39

6

(4) (a), whichever is earlier, a person proposing to engage in ferrous mining shall

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notify the department in writing of the intent to file an application for a mining

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permit.

9

(3) DETERMINATION OF COMPLETENESS. After the department receives an

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application for a mining permit under s. 293.37 for ferrous mining, the department

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shall determine whether the application is complete. If the department determines

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that the application is not complete, the department shall inform the applicant of the

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additional information that must be provided to complete the application. When the

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department determines that the application is complete, it shall notify the applicant.

15

(4) NOTICE OF APPLICATION. After receiving notice under sub. (3) that the

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application for a mining permit is complete, an applicant proposing to engage in

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ferrous mining shall publish a legal notice, under ch. 985, of the ownership, location,

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and boundaries of the proposed mining area and reclamation and restoration

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operations, at least once a week for four successive weeks. Within 7 days of

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publication of the last date of publication, the person shall submit a copy of the notice

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to the department.

22

(5) HEARING. (a) No later than 30 days after the day of publication of the last

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notice required under sub. (4), any of the following may file written objections to an

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application for a permit under s. 293.37 for a ferrous mining project:

1 1. A person owning property that will be affected by the proposed ferrous
2 mining operation.

3 2. Any federal, state, or local governmental agency with responsibilities
4 affected by the proposed ferrous mining operation.

5 (b) If the department receives written objections under par. (a), the department
6 shall hold a public hearing on the mining permit application in the county in which
7 the majority of the mining site is located no more than 30 days after receiving the
8 objections, after providing appropriate notice of the date, time, and place of the
9 hearing.

10 (c) The department may hold a hearing on an application for a mining permit
11 under s. 293.37 for ferrous mining without receipt of objections no later than 30 days
12 after the day of publication of the last notice required under sub. (4) if the department
13 determines that a hearing is necessary to protect public health, safety, and welfare.

14 (6) ACTION ON APPLICATION. If neither s. 293.39 (5) (a) or (b) applies, no later than
15 120 days after receiving the notice of publication under sub. (4) or, if the department
16 holds a hearing under sub. (5), after holding the hearing, the department shall issue
17 or deny the mining permit.

18 **SECTION 15.** 293.51 (3) of the statutes is amended to read:

19 293.51 (3) Upon approval of the operator's bond, mining application, other
20 departmental approvals that are required in connection with the mining project, and
21 certificate of insurance, the department shall issue written authorization to
22 commence mining at the permitted mining site in accordance with the approved
23 mining and reclamation plans.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0285/P1dn

RCT@JK.....*kgf*

Date

This is a preliminary draft of the substitute amendment to the iron mining bill.

Joe Kreye drafted the proposed tax changes. My approach to the rest of the draft was to change the procedures for issuing DNR approvals for iron mines to be consistent with the Minnesota procedures, to the extent possible, with the addition of a notice of intent requirement. The draft makes no changes to environmental standards.

One of the main changes that this draft makes to current law, is providing that the necessary DNR approvals other than the mining permit are processed separately from the mining permit, using the procedures used for any nonmining activity. As part of this change, this draft provides that there is not a master hearing for iron mines. The ordinary administrative process under ch. 227, including the opportunity for contested case hearing on each approval, will thus apply, as it does in Minnesota.

Another major change is creating an environmental impact statement (EIS) process for proposed iron mining. This is modeled on, but not identical to, the Minnesota process. It was necessary to make some changes because of differences in state governmental structure and preexisting laws and I simplified some aspects of the process a bit (I think). I have tried, though, to maintain the Minnesota timeline.

X Minnesota law provides a 120-day deadline for acting on a mining permit application. It also (in the EIS law) prohibits an agency from acting on an application for any kind of permit before the EIS process is complete, and generally requires an agency to act on an application within 90 days after the EIS process is complete. I am not certain how these deadlines are interpreted. Currently, this draft gives the deadlines relating to the EIS process priority over the 120-day time limit for acting on a ferrous mining permit application. It also appears to me that Minnesota law includes a determination of the completeness of a mining permit application and delays the deadline for acting on the mining permit application if the application is not complete. I have not yet determined whether there is a time limit for for the Minnesota DNR to make the completeness determination. This draft contains a completeness determination with no time limit.

This draft should be reviewed carefully. I will try to do that and ask Anna Henning and Larry Konopacki to try to do so as well.

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
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E-mail: becky.tradewell@legis.wisconsin.gov

→ Please note that the draft makes no changes related to prospecting permits, so the current process applies. One option to make the law more similar to Minnesota law would be to exempt iron ore prospecting from the permitting requirement under ch. 293.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0285/P1dn
RCT:kjf:jm

January 17, 2012

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